

To: Members of the Council on Foreign Relations

August 26, 1971

From: Richard A. Falk, Center of International Studies
Princeton University, Princeton, N.J. 08540

Re: David Rockefeller's Memorandum of August 9, 1971
concerning the appointment of William P. Bundy as
Editor of Foreign Affairs*

We believe that there are certain further aspects of our continuing objection to the appointment of William Bundy as the next editor of Foreign Affairs that should be brought to the attention of Members. Mr. Rockefeller's memorandum quotes from my letter to him of July 19, 1971. Though I approved its use for this purpose the letter was not intended as a statement of our position, but was written to suggest why we believed that the original response by the Board of Directors to our concerns was not satisfactory. In this respect my letter presupposed certain earlier discussions and communications, most particularly the presentation of our position at the meeting with the Selection Committee of the Board held on June 3, 1971. We wish to make several points.

1. The focus of our concerns from the beginning has been upon the exercise of discretion by the Board of Directors in selecting Mr. Bundy for this kind of position at this time. The main basis for objection to this appointment is our belief that Mr. Bundy has been principally associated with the formation and execution of governmental policies in connection with the Vietnam War that violate minimum international rules of law and morality, and that since Nuremberg such conduct constitutes criminal violations of international law. We realize that no court has passed upon these contentions, but we are suggesting that if such an international tribunal were convened on some impartial basis it would in all reasonable likelihood reach this conclusion. Our judgment is based upon careful study over several years of the war policies and of the literature bearing on the legal and moral aspects of the war. Although

*As the Council has a rule against distributing material initiated by Members, this Memorandum is being sent out in my personal capacity. However the Council, as it has never done before, made a special exception and gave me its list of Members with their addresses.

there are students of this subject who do not agree with us, there are many who do. Neil Sheehan concluded in a front-page book review in the Sunday New York Times of seventeen or so major books on war crimes that "If you credit as factual only a fraction of the information assembled here about what happened in Vietnam, and if you apply the laws of war to American conduct there, then the leaders of the United States for the past six years, including the incumbent President, Richard Milhous Nixon, may well be guilty of war crimes" [NYT, March 28, 1971, Sect. 7, p. 1]. Former General Telford Taylor who may be the leading authority on this subject wrote in his book Nuremberg and Vietnam: An American Tragedy that: "The war, on the massive lethal dimensions it acquired after 1964 was the work of highly educated academics and administrators, most of whom would fit rather easily the present Vice President's notion of an 'effete snob.' It was not President Kennedy himself, but the men he brought to Washington as advisors and who stayed on with President Johnson--the Rusks, McNamaras, Bundys, and Rostows--who must bear the major responsibility for the war and the course it took" [p. 205]. It should be appreciated that General Taylor reached this conclusion without the benefit of the Pentagon Papers and despite his own background of support for the war until 1965 and a cautious appraisal of the relevant facts and law. The other point emphasized by General Taylor that is relevant for us is that the role of the United States in evolving the Nuremberg code of conduct was so central that "the integrity of the nation is staked on those principles" and their application to the circumstances arising out of the war in Vietnam.

On this basis our position is that, at minimum, there are reasonable grounds to believe that someone who played such a prominent role as Mr. Bundy in carrying out these war policies is morally and legally (at least hypothetically) responsible. Furthermore, that many people do in fact believe that such responsibility should exist. Hence, in our view it was unreasonable for the Board in this situation of doubt to reward someone of Mr. Bundy's background with a job of this character. We would stress that the appointment of Mr. Bundy

as editor of Foreign Affairs inevitably conveys to the public an approval of his role in carrying out the policies. Let it be understood that we are not urging that Mr. Bundy is "a war criminal" or even that he should be "punished" for what he has done. We are also not suggesting that support for the war policies should disqualify Mr. Bundy or anyone else from the editorship of Foreign Affairs, but only that a prominent role in carrying out these policies should, out of minimum regard for these concerns, have disqualified Mr. Bundy from consideration for this kind of position. *include Ball!*
on the nature of CBS Content!

2. The Staff and Board of the Council have dealt with these concerns of ours with great seriousness and courtesy. We appreciate this. However, we would point out that Mr. Rockefeller's memorandum and earlier discussions did not respond to the disqualifying argument that I have set forth in paragraph (1). We feel that the Council membership still deserve to know whether the Board regards it as frivolous or unfounded to suggest (1) that it is reasonable to believe the Vietnam War policies to have been illegal and immoral and in violation of the Nuremberg Principles; (2) that Mr. Bundy was prominently associated with the development and execution of these policies; and (3) that these assertions, if accepted, are appropriate grounds for rescinding Mr. Bundy's appointment or requesting his resignation. We continue to hope for a direct response from the Board on this point and renew our suggestion for an open discussion within the Council of the issues raised by our position.

3. We would also point out that the selection process described by Mr. Rockefeller's memorandum tended only to elicit positive recommendations and would normally not uncover objections of the sort that we were forced to raise after the public announcement of the appointment. In this regard we think that a greater effort should be made in the future to assess the full range of views--positive and negative--held by Council membership.

4. We would reject strenuously the suggestions made in some quarters that our assertion of these concerns amounts to "left-wing McCarthyism." First, the essence of McCarthyism was reckless charges against innocent people; in our judgment these concerns about Mr. Bundy's appointment are not

reckless, nor is he innocent. Secondly, we are not urging punishment nor seeking publicity for ourselves. Thirdly, our interest arises because we are Members of the Council whose moral sensitivities have been affronted by this appointment. Fourthly, our objections to Mr. Bundy are not based on a dislike for his views, but because we believe he acted in high public office in a manner that defied minimum legal standards. We believe that the application of these standards is vitally important for the future welfare of this nation.

5. We welcome reactions from Members and will do our part to maintain dialogue with all sides on these questions. We are eager to strengthen the role and impact of the Council and Foreign Affairs and feel that the assertion of our position contributes to this end.